

General Information Letter: Nexus determinations are beyond the scope of letter rulings.

January 5, 2001

Dear:

This is in response to your letter of November 10, 2000 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (*2 Ill. Adm. Code 1200*). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

Pursuant to instructions received from the Illinois Department of Revenue "Registration Unit" we are writing to the Legal Division to request clarification as to xxxxxxxxxxxxxxxxxxxxxxxxxxxx filing requirements with the State of Illinois and to determine if our activities are subject to taxation by Illinois.

xxxxxxxxxxxxxxxxxxxxxxxxxxxx, a wholesale flower company is based in New Jersey and Florida. We sell flowers to mass merchandisers who are resellers. The company does not maintain a facility in Illinois and ships all product from New Jersey to Florida via common carriers. The Company's only presence in Illinois is one salesperson who works from home. The employee started working for xxxxxxxxxxxxxxxxxxxxxxxx this past September and the company is currently remitting state income tax withholding and unemployment taxes to the Illinois Department of Revenue on behalf of the employee. This is xxxxxxxxxx first employee located in Illinois. The salesperson's only function is to visit customers and solicit sales; the salesperson does not carry any inventory or provide other services.

Based on the above, we believe xxxxxxxxxxxxxxxxxxxxxxxxxxxx is not required to begin filing corporate tax returns with Illinois, however, we would like to confirm this with your office. Therefore, please advise us as to xxxxxxxxxxxxxxxxxxxxxxxx filing requirements with the State of Illinois based on the above facts and the enclosed Illinois Business Registration Form NUC-1.

DISCUSSION

In answer to your letter, it is not within the scope of a general information letter to determine whether a taxpayer has nexus with the state of Illinois. Such a determination can only be made in the context of an audit wherein the auditor would have full access to all pertinent information. Rather, a general information letter is appropriate for discussing general aspects of Illinois law. Accordingly, I can provide you with a general discussion of the law in Illinois.

Illinois law determines "doing business" as the prevailing principles of jurisprudence under the commerce and due process clauses of the US Constitution. The leading case in the area is *Quill v.*

North Dakota, 112 S.Ct. 1904 (1992), which found that a state could not tax a business whose only activity within a state is by mail order. Some physical presence is necessary and a taxpayer must purposefully avail itself of an economic market before a state could exert jurisdiction over a taxpayer for taxing purposes. However, subject to the limits of *Quill* and PL 86-272 a state is allowed to tax someone if it so chooses. The providing of services does not qualify for protection under PL 86-272. But, occasional visits to the state would probably satisfy the commerce and due process clauses. In the New York case of *Orvis v. Tax Appeals Tribunal*, 86 N.Y.2d 165, 654 N.E.2d 954 (1995), the court found that four visits to nineteen customers in one year was enough to allow the state to tax a Vermont wholesaler.

Concerning your situation, the presence of an employee in Illinois would most likely create taxable nexus between your company and the state of Illinois. In addition, the employee's duties of both soliciting sales and visiting customers forestalls protection under PL 86-272.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian
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Income Tax Division